

Fall 2018

SOUTH CAROLINA BAR FAMILY LAW SECTION COUNCIL NEWSLETTER

*South Carolina Bar
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Professionalism Tip of the Month:

“Do not automatically attribute bad intent to opposing counsel.”
– James T. McLaren



The Council's goals include monitoring pending legislation, sponsoring CLEs, and providing members with information pertaining to all other issues affecting or relating to family law. The Council recently has been working to revise the alimony statutes, and to address issues with lay Guardian *ad Litem*s.

We appreciate any input from the members of the Family Law Section. Our email addresses are listed above. Please feel free to contact any member to find out what Council can do for you or to give us feedback.

Family Law Seminars

2018 Family Court Intensive CLE

This biennial seminar is scheduled to take place November 2-4, 2018, at the Omni Grove Park Inn in Asheville, North Carolina. The focus of this intensive will be complex evidence, including admitting social media materials into evidence, and other technology-related subjects. Also, there are sponsorship opportunities priced at \$250 and \$500 available. Please contact Cheryl Underwood if you are interested at cheryl.underwood@sctbar.org or (803) 576-3833.

2019 Bar Convention

The annual Bar Convention will take place in Myrtle Beach at the Marriott Resort & Spa at Grande Dunes January 17-20. As in past years,

the Family Law Section CLE will take place on Friday afternoon from 2:00 until 5:15 PM. Hotel reservations can be made now by calling 1-800-228-9290 and referencing the 2019 SC Bar Convention.



Do Grandparents Have Custody and Visitation Rights to Their Grandchildren?

By Kerrison A. Schmutz, Esquire, Harrison White, P.C.

The issue of whether or not grandparents in South Carolina have visitation rights with their grandchildren is broadly outlined in S.C. Code 63-3-530(A)(33). Under this provision, the family court has exclusive jurisdiction to order visitation for the grandparent of a minor child when either or both parents of the minor child is or are deceased, or are divorced, or are living separate and apart in different habitats, if the court finds that: (1) the child's parents or guardians are unreasonably depriving the grandparent of the opportunity to visit with the child, including denying visitation of the minor child to the grandparent for a period exceeding ninety days; and (2) the grandparent maintained a relationship similar to a parent-child relationship with the minor child; and (3) that awarding grandparent visitation would not interfere with the parent-child relationship; and (a) the court finds by clear and convincing evidence that the child's parents or guardians are unfit, or (b) the court finds by clear and convincing evidence that there

are compelling circumstances to overcome the presumption that the parental decision is in the child's best interest. However, the practical application of this statute to various client scenarios can be challenging.

In Grantham v. Weatherford, 2018 WL 4211544, 2018 S.C. App. LEXIS 69 (S.C. Ct. App. Sept. 5, 2018), the maternal grandparents sued the father for visitation with their grandchildren after their daughter committed suicide and the father stopped allowing them contact with their grandchildren. The grandparents were able to show the family court that they had been very involved in their grandchildren's lives since their birth. They took and picked up the children from school, cooked for the children, bathed the children, bought clothes for the children, and took the children to doctor's appointments. The family court awarded the grandparents one weekend of visitation per month, one week of summer visitation, and visitation any other time the parties agreed. The father appealed and argued the family court erred by requiring a fit parent to proceed with grandparent visitation due to an unconstitutional application of section 63-3-530 (A) (33).

The Court of Appeals disagreed with the father and found that the father unreasonably denied grandparents visitation with the minor children for a period exceeding ninety days, that the grandparents had a significant and extensive relationship with the children, as described above, and that awarding grandparent visitation would not interfere with the father's relationship with the children because the grandmother knew the children had a loving relationship with their father, respected that relationship, and insisted that visitation would not interfere with the father's ability to parent. The Court also turned to the Supreme Court's holding in Marquez v. Caudill that "a biological parent's death and an attempt to maintain ties with that deceased parent's family may be compelling circumstances justifying ordering visitation over a fit parent's objection." 656 SE 2d 737, 376 S.C. 229, (2008). Like in Marquez, the Court in the present case found that there were compelling circumstances to justify ordering visitation over the father's objection, and the lower court's decision was affirmed.

The application of the grandparent visitation statute in Grantham v. Weatherford demonstrates that grandparents do have rights to their grandchildren. The love and bond between grandparents and their

grandchildren alone may not be enough to persuade a court to rule in favor of the grandparents, but after the death of a parent, it may establish “compelling circumstances” under the statute.

**SOUTH CAROLINA
FAMILY LAWYERS’ TOOLKIT**

The **SC Family Lawyers’ Toolkit** Third Edition is now available! Council has updated the previous version and it includes new sections, such as: How to Introduce Electronic Evidence, an Alimony Case Spreadsheet, an Adoption checklist and UCCJEA and UIFSA Flow Charts. The Toolkit is designed to provide a practical, user-friendly resource for new and experienced family law attorneys.

[Order online here](#)

or

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**FEEDBACK
REQUESTED**

Do you have an opinion about the Supreme Court Order concerning affidavit page limits at temporary hearings, or the family courts’ application of the Order? If so, please email it, or any other comments about or suggestions for the newsletter, to chris@chrispatonllc.com.